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e-Court – Dutch Alternative Online Resolution of Debt Collection Claims

A Violation of the Law or Blessing in Disguise?

Willemien Netjes & Arno R. Lodder[*]

Abstract

In 2017, the Dutch alternative dispute resolution (ADR) initiative e-Court handled 20,000 debt collection claims via an online arbitration procedure, and this number was expected to double in 2018. In September of that same year, the Chairman for the Council of the Judiciary, Frits Bakker, argued on the Day for the Judiciary that in the future most lawsuits can be handled automatically and that a robot judge could work fast, efficiently and cheaply. However, in January 2018, Frits Bakker seemed to have changed his mind and criticized e-Court for its lack of impartiality, lack of transparency, unlawfully denying people the right to a state Court, and for being a 'robot judge'. Ultimately, all criticism boiled down to one issue: that the defendant's right to a fair trial was not sufficiently protected in e-Court's procedure. This accusation led to a huge media outcry, and as a result Courts were no longer willing to grant an exequatur to e-Court's arbitral awards until the Supreme Court had given its approval. This forced e-Court to temporarily halt its services. Questions such as 'is arbitration desirable in the case of bulk debt collection procedures?' and 'are arbitration agreements in standard terms of consumer contracts desirable?' are relevant and important, but inherently political. In this article, we argue that the conclusion of the judiciary and media that e-Court's procedure is in breach of the right to a fair trial is not substantiated by convincing legal arguments. Our aim is not to evaluate whether online arbitration is the best solution to the debt collection claim congestion of Courts in the Netherlands, but instead to assess e-Court's procedure in the light of Article 6 of the European Convention of Human Rights. The conclusion is that e-Court's procedure sufficiently guarantees the right to a fair trial and thus that the criticism expressed was of a political rather than legal nature.

Keywords: fair trial, money claims, judiciary, ECHR, arbitration.

1 Introduction

In May 2000, scholars and policymakers from Italy, France, UK, Belgium, Norway and the Netherlands gathered in Leiden to discuss the current state as well as the

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future of *IT support of the Judiciary in Europe*.[1] As the discussions progressed, the future appeared to turn out less bright. For in April 2018 a Dutch project to facilitate electronic communication and exchange of Court documents was terminated, without success and after having spent 220 million euro (original budget: 7 million). Around the same time the successful online dispute resolution (ODR) project e-Court was, at least temporarily, pushed out of the market. e-Court was highly criticized for violating the law. This paper seeks to analyse whether e-Court's procedure sufficiently guarantees the right to a fair trial, as enshrined in Article 6 of the ECHR (European Convention on Human Rights).

A legal analysis of the ODR initiative e-Court in the light of recent Dutch developments is interesting in its own right. In addition, in the context of e-commerce, recital 4 of the 2013 EU ODR Regulation[2] considers the lack of successful ODR "a barrier within the internal market which undermines consumers' and traders' confidence in shopping and selling across borders." More generally, scholars have for years wondered why the taking up of ODR in practice is so slow in relation to the expectations we had years ago. This article analyses whether the legal arguments used justify the termination of an ODR provider that was successful. The short answer is no: invoked arguments are of a political rather than legal nature. Perhaps society, in general, and the judiciary, in particular, are still not ready for ODR.[3] Even a proponent of ODR like Lord Briggs stated during an ODR conference in July 2018 in Liverpool that he believed ODR would become a success but hoped it would be after he and his wife retired. He obviously stated it with a wink, but the threat some see in ODR should not be underestimated.

In 2009, the online arbitration institution 'e-Court' started in the Netherlands as a professional, cheaper and quicker alternative to state Courts[4] and was backed by government support.[5] While e-Court initially handled simple cases varying from debt collection to labour cases as well as small claims procedures up to a maximum of 100,000 euros, since 2014, it has exclusively taken on debt collection cases. In early 2018 a media frenzy was unleashed, and articles titled 'verdict for sale'[6] and 'commercial judiciary should be halted immediately'[7] were pub-

1 A.R. Lodder, A. Oskamp & A.H.J. Schmidt (Eds.), *IT support of the Judiciary in Europe*, Den Haag, SDU, 2001.

2 Reg. (EU) No. 524/2013 of 21 May 2013 on online dispute resolution for consumer disputes, *see* A.R. Lodder, 'Commentary on the Regulation', *in* S. Gijrath *et al.* (Eds.), *Concise European Data Protection, E-Commerce and IT Law*, 3rd ed., London/Boston, Kluwer Law International.

3 J.C. BetanCourt & E. Zlatanska, 'Online Dispute Resolution (ODR): What is it, and is it the Way Forward?, *International Journal of Arbitration, Mediation and Dispute Management*, Vol. 79, No. 3, 2013.

4 H.W.R. Nakad-Weststrate, H.J. van den Herik, A.W. Jongbloed & A.B. Salem, 'Digitally Produced Judgements in Modern Court Proceedings', *International Journal of Digital Society (IJDS)*, Vol. 6, No. 4, 2015, p. 1102.

5 [Dispute Resolution by E-Court from a consumer protection angle] M.B.M. Loos, 'Geschillenbeslechting door e-Court vanuit consumentenrechtelijk perspectief bezien', *WPNR*, Vol. 145, No. 7003, 2014, pp. 92-98.

6 [Verdict for Sale] K. Kuijpers, T. Muntz & T. Staal, 'Vonnis te Koop', *De Groene Amsterdammer*, 18 January 2018, p. 3.

7 A.J. Moerman & B. Houkes. 'Rechtspraak op bestelling?! Stop commerciële rechtspraak', *Sociaal Werk Nederland*, January 2018.

lished, arguing that e-Court's procedure constituted a severe breach of the fundamental right to a fair trial. Points of criticism were the lack of transparency, e-Court being a 'robot judge', that e-Court denied consumers unlawfully the right of access to a state Court and that e-Court was not independent and impartial.[8] Ultimately, all criticism boiled down to one issue: the defendant's right to a fair trial was not sufficiently protected in e-Court's procedure.

In her 2008 PhD thesis *Electronic Alternative Dispute Resolution - Increasing Access To Justice Via Procedural Protections,* Susan Schiavetta analysed ODR in the light of the ECHR and stated that ODR inherently does not fully satisfy Article 6 ECHR but that this does not necessarily mean that the process is not fair. Certain procedural safeguards might be weakened, as long as

> this is compensated for by other benefits accruing from the use of e-ADR, such as a cheap and fast resolution process. The extent to which disputants accept this corrosion of their rights will vary from disputant to disputant.[9]

In this article we therefore do not analyse whether e-Court's procedure guarantees all rights enshrined in Article 6, as the right to a public trial, for example, will not be protected, but whether defendants' right to a fair trial is sufficiently safeguarded.

Article 6 of the Convention enshrines the right to a fair trial. The Convention itself does not make any references to arbitration, nor do its *travaux preparatoires*.[10] However, the EC

HR has held that the article is partially applicable to arbitral procedures. When parties sign an arbitration agreement and thereby submit their dispute to an arbitral tribunal, they partially 'waive' the right to a fair trial. Strasbourg case law teaches us that a "waiver may be permissible with regard to certain rights but not with certain others."[11] The rights to a fair hearing and to an independent and impartial tribunal are absolute and may not be waived. Moreover, the arbitral agreement itself, or 'the waiver', must have been established in a free and unequivocal manner[12] and should not "run counter to any important public interest."[13] This article will first introduce e-Court's history and online procedure. Subsequently, we shall analyse Art. 6's three core issues: the legitimacy of e-Court's arbitral agreement, its independence and impartiality and whether it provides the right to a fair hearing. We will end with a conclusion on whether e-Court's procedure sufficiently guarantees the right to a fair trial.

8 *Ibid*.

9 S. Schiavetta, *Electronic Alternative Dispute Resolution – Increasing Access to Justice via Procedural Protections*, PhD thesis, University of Oslo, 2008.

10 G. Dal *et al.*, *L arbitrage et la Convention européenne des droits de l homme*, Droit et Justice No. 31, Nemesis, 2001, pp. 57-68, at 59

11 *Suovaniemi c.s. v. Finland*, No. 31737/96, ECHR 1999, §53.

12 *Deweer v. Belgium*, No. 6903/75, EHRM 1980.

13 *Håkansson and Sturesson v. Sweden*, No. 11855/85, ECHR 1990, §66; *Dorozhko and Pozharskiy v. Estland*, No. 14659/04 and 16855/04, ECHR 2010.

2 e-Court

2.1 History

e-Court started to offer its services in 2009, as a general online arbitration platform. There was discussion about whether the use of the terms 'Court' and 'judge' would confuse users. In the early 2000s, Colin Rule explained that ODR does not have the term 'alternative' in its name because Courts do not work online and ODR therefore automatically concerns alternative dispute resolution. However, in 2009 citizens would not be surprised to find Courts offering online processes or at least offering the option to electronically upload and access case-related documents and information. For instance, the judiciary in India uses an 'e-Court' website for that purpose.[14] Nonetheless, e-Court did stop using the term judges, but its name remained the same. At least in the Netherlands the use of an English term, e-Court, should not be confusing.

e-Court received government support in its early days and ended up as a finalist in the 2011 HiiL innovating justice awards[15] competition. Around the same time, the Ministry of Justice decided that the process of e-Court in which notary documents were used to enforce outcomes of the online process was invalid and notaries and bailiffs were no longer allowed to support e-Court's procedure. In 2014, e-Court decided to switch exclusively to handling debt collection cases. Their number grew fast. In January 2018, 94% of all health insurance providers in the Netherlands as well as Internet giant Bol.com had an arbitration clause in their standard terms that referred their debt collection disputes to e-Court. The prediction was that e-Court would handle over 40,000 cases in 2018, more than double its caseload in 2017.

For an arbitral award to be enforceable, an 'exequatur' is required. This exequatur is granted by a Court after a marginal review of the arbitral award. In January 2018, a critical report on e-Court was published[16] by social counsellors, followed by tendentious media coverage and a fierce critique by the judiciary. As a consequence of all this negative publicity, Courts were no longer willing to grant e-Court awards an exequatur and wanted a decision about the validity of those awards by referring preliminary questions to the Supreme Court. However, as the judiciary had voiced its concerns regarding the effects of competition, the use of digitalization, possible loss of employment within the judiciary, and the fear that public law would be marginalized by e-Court, a Dutch Court is arguably not impartial and hence not competent to rule on this issue. The accusation that the Supreme Court is not independent is a bold statement, but the Dutch attorney Matthijs Kaaks has analysed the judiciary's financial interest in handling debt collection cases. Annually, there are approximately 400,000 undisputed debt collection cases. While the production costs of such judgments are €12, the Court fee

14 www.ecourts.gov.in/eCourts_home/.

15 https://innovatingjustice.com/.

16 [Verdicts on request?! Stop commercial jurisdiction] Moerman & Houkes, 2018.

ranges between €119 and €476. He therefore estimates that the judiciary's annual profits for debt collection proceedings are 200 million.[17]

2.2 *e-Court's Procedure*

The e-Court arbitral agreement is usually included in the standard terms of a consumer contract. e-Court's model clause reads:

> The parties have the possibility to have their disputes with regard to this agreement settled by arbitration via Stichting e-Court, hereinafter "e-Court" (www.e-Court.nl). If [the company] invokes this provision, [the consumer] has the opportunity during one month to still opt for the government Court. The procedure at e-Court will take place in accordance with the procedural rules published on www.e-Court.nl/juridisch.[18]

When a party wants to bring an action before e-Court, it must inform the other party in writing[19] and should in its letter include information about the proceeding and the starting date.[20] From the moment the defendant receives the letter, he has one month to opt for a state Court.[21] Under Dutch law, this one-month period is required before the proceedings start when an arbitral agreement is included in the standard terms of a consumer contract.[22] During this month, log-in details for the online procedure are sent to the defendant's email address that is mentioned in the letter. After the month has expired and the defendant has not indicated he wants to start proceedings before a Court, he has renounced his right to submit the conflict to a state Court. e-Court is now competent to decide on the issue.

One month after the letter has been received by the defendant, the first round of the procedure starts on Monday morning at 09:00 and lasts till Friday at 17:00.[23] During this week, the defendant can defend himself by uploading documents. If a party wants to have a hearing, he must inform the arbitrator before Wednesday 17:00. e-Court appoints the arbitrator,[24] but parties may challenge the arbitrator within three days after the procedure has started,[25] in which case e-Court's supervisory board decides on the challenge within 24 hours.[26] If a party has not responded to the claim before Friday 17:00, the claim is awarded unless it seems clearly unlawful or unfounded to the arbitrator.[27] This award is called a robot verdict, but there is not much technology involved since what has been

17 M. Kaaks, 'Kiloknallers van de rechtspraak', *Advocatenblad*, No. 3, 2018, p. 7.
18 Procesreglement e-Court [e-Court's procedural rules], annex: model clause standard terms.
19 Art. 4 (1) e-Court's procedural rules; Art. 3:37 DCC.
20 Art. 4 (2) e-Court's procedural rules.
21 Art. 5 (1) e-Court's procedural rules.
22 Art. 6:236n of the Dutch Civil Code ('DCC').
23 Art. 9 (1) e-Court's procedural rules.
24 Art. 6 (1) e-Court's procedural rules.
25 Art. 7 (4) e-Court's procedural rules.
26 Art. 8 (1) e-Court's procedural rules.
27 Art. 12 (2) e-Court's procedural rules.

claimed is awarded. When the defendant does respond to the claim, a second round takes place in the following week from Monday 09:00 till Friday 17:00, during which parties can respond to each other's statements.[28] Parties can do this by uploading documents as well as writing messages directly on the platform. As a rule, these two rounds are not extended, and an arbitrator usually decides on a case after the second round. Only when parties are discussing an amicable solution outside of e-Court's procedure, the arbitrator may grant extension by 'parking' the procedure.[29]

After rendering an award, the arbiter submits on behalf of the applicant a petition requesting an exequatur with the competent District Court,[30] which was usually the District Court in Almelo. The competent Court 'summarily' investigates the award and usually grants the exequatur. Only in exceptional cases cf. Article 1065 Rv is the award set aside, e.g. owing to the non-existence of a valid arbitration agreement, when an award is not signed or lacks a motivation; and when the award or the manner in which it was made violates public policy (*i.e.* violation of the right to hear and be heard, partiality of arbitrators, etc.).[31] Once an exequatur has been granted, e-Court's judgment has a so-called executorial title,[32] and the applicant can enforce the decision.

3 Legitimacy Arbitral Agreement

In this section, we discuss whether e-Court's arbitral agreement as a partial 'waiver' of the right to a fair trial is valid under the Convention. Criticism has been voiced regarding the validity of the 'secretly hidden' arbitration agreement in the standard terms. Specifically, it was argued that consumers usually do not read standard terms and have therefore not consciously consented to give up their right to a state Court.[33] We show that e-Court's arbitral agreement is valid and that its summoning letter informs adequately about the option to opt for litigation. Even when consumers have missed the term about arbitration, they still have sufficient opportunity to have their case decided by a state Court.

3.1 Are All Requirements for a Valid 'Waiver' Fulfilled?

According to the European Court of Human Rights (ECtHR) an arbitral agreement is a partial 'waiver' of the fundamental right to a fair trial and is subject to certain requirements. First, an arbitral agreement must have been made in an unequivocal manner. e-Court's arbitral agreement is included in the standard terms, in a clear manner.

Second, the arbitral agreement must be concluded in the absence of constraint. There are no specific criteria to determine what constitutes constraint,

28 Art. 9 (3) e-Court's procedural rules.
29 Art. 10 e-Court's procedural rules.
30 Art. 1063 Rv (Civil Procedural law).
31 Art. 1065 Rv.
32 Art. 430 Rv.
33 Kuijpers *et al.*, 2018, p. 3.

but economic pressure does not necessarily mean that the agreement was involuntary, *e.g.* an arbitral clause in an employment contract is considered to have been accepted voluntarily.[34] The argument in the case of the employment contract is that the applicant was 'free' to refuse the work. However, what if that person really needed this particular job and 94% of all employment contracts contained an arbitral clause? That is essentially what is happening with e-Court.[35] Would that still qualify as voluntarily? Probably not. Also, under European consumer law, arbitral clauses in standard terms of consumer contracts are regarded as unfair.[36] Especially when consumers have almost no choice but to accept, such an arbitral agreement can therefore not be said to have been concluded voluntarily.

However, e-Court's arbitral clause is fundamentally different from standard arbitration agreements: e-Court's model clause contains a one-month 'opt-out' period that, after a dispute has arisen, allows the defendant to go to a state Court. Only after the month has passed and the defendant has not made use of this opportunity is e-Court competent to decide on a case. Whereas a normal arbitral clause irreversibly removes the competence from a state Court, e-Court's arbitral clause is not final in the sense that the defendant still has one month to change his mind and choose litigation. Under these circumstances, there is no form of duress or constraint to submit a dispute to an arbitral tribunal. Under Dutch law, an arbitral clause included in a consumer contract is considered fair as long as an 'opt-out' period of one month is given.[37] However, it is considered valid only when parties have expressly or impliedly accepted the arbitration clause.[38] Below, we show what case law considers 'implied acceptance.' One relevant point is that the waiver should be made explicitly, a 'silence implies consent' basis is too weak for waiving such an important right. We are not sure about the policy by e-Court on this point, but if e-Court would resume its services, they should integrate explicit consent not to go to court into their process.

In 2011, a party was invited to resolve the dispute through e-Court's arbitration procedure. The letter stated that unless the defendant took up action and made it known he wanted to go to a state Court, the dispute would be handled by e-Court. However, previously *no* reference had been made to arbitration in the contract between the parties, or in the standard terms. This therefore did not qualify as a valid arbitration agreement, as the defendant had not wilfully accepted the arbitral agreement: "inaction is simply not equal to implied acceptance."[39] One year later, e-Court's arbitral clause was inserted into the standard terms after

34 *X. v. Federal Republic of Germany,* No. 4618/70, Commission Decision of 21 March 1972.

35 94% of all health insurance providers refer to e-Court, and taking out health insurance is mandatory under Dutch law, according to Parliamentary Inquiries, ah-tk-20172018-1802, 18 April 2018.

36 Art. 3(3) jo. Annex list 1 (q) of the Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts.

37 6:236n DCC.

38 Art. 1021 Rv, 6:227a (1) DCC.

39 r.o. 2.7, ECLI:NL:RBALM:2011:BT7088; Translation from: "Stilzitten is nu eenmaal niet gelijk te stellen aan stilzwijgende aanvaarding."

the contract had already been signed. This was held to have been concluded voluntarily as the consumer had been informed of the new standard terms and had not opposed their implementation. This qualified as implied acceptance; the Court granted the exequatur.[40] When e-Court's arbitral clause was included in the standard terms of the health insurance companies, consumers were informed of the changing terms. Thus, both express or implied acceptance as well as a one month 'opt-out' period are required for e-Court's arbitral clause to be valid under Dutch consumer law. These requirements meet the threshold for 'absence of constraint' under the Convention.

Third, the waiver should be accompanied with minimum procedural guarantees commensurate with the importance of the rights waived. This means that there should be 'compensatory factors' (fair trial guarantees) in the subsequent procedure. The consumer is given the opportunity to be heard, challenge the arbitrator if there is a sense of partiality and comment on the other party's arguments. We shall analyse these procedural guarantees in depth in the following sections.

Finally, on the basis of European fundamental rights, we must establish whether the arbitral clause does not run counter to any important public interest. There seems to be no important public interest present opposing online arbitration as long as the procedure is fair. One argument could be that bulk debt collection cases *must* be handled by a District Court because indebted people deserve additional protection. There is, however, no reason to assume that a defendant's rights are better protected in normal litigation than in e-Court's procedure. In a District Court, debt collection cases where the defendant does not appear are checked only marginally, so basically rubber-stamped by the Court's registry. According to e-Court, in their procedure the chance that an invalid claim is awarded is probably smaller because algorithms are used to identify unusual patterns rather than being subjected to random checks in District Courts.

Whether or not one agrees with the Dutch law that allows for arbitral clauses in standard terms of consumer contracts is a political opinion. Legally, e-Court's arbitral clause meets all criteria of a valid 'waiver' under the ECHR and of a valid arbitration agreement under European and Dutch consumer law; that is, assuming that e-Court has indeed properly informed the consumer of his opportunity to still go to a state Court. We will examine this next.

3.2 Summoning Letter

e-Court's model clause is a fair standard term because of the one-month opportunity to 'opt-out', but this does not mean that the defendant is necessarily aware of this right. If not, the opportunity is rendered essentially meaningless. Critics argue that e-Court's summoning letter is not doing this properly and therefore "deliberately deceives the defendant and unlawfully denies the defendant access to a state Court."[41] We will analyse e-Court's summoning letter.

40 r.o. 2.8, ECLI:NL:RBALM:2012:BV8413.
41 Moerman & Houkes, 2018.

Some argue that the name 'e-Court' and the legal and intimidating tone of voice make it insufficiently clear that e-Court is an arbitration tribunal and not a state Court. In his article, Hartendorp correctly states that "for individuals, there should be no ambiguities about the nature of the procedure in which they participate nor about the status of the dispute resolution body."[42] However, the first thing the letter says is 'call for arbitration' and the option to choose a state Court is explicitly given under point five. The text is unambiguous and clearly informs the defendant of his right:

> the defendant has the right to, within one month from today, choose for a procedure at the District Court instead of e-Court Foundation. If the defendant wishes to make use of this opportunity, he must make this known within the stated term of one month to the Dutch organisation for bailiffs GGN[43] by sending a letter.

In practice, GGN also accepted it when defendants sent emails stating their choice of forum. One might argue that it would have been better to have a box stating this right to abstain from arbitration directly after the 'call for arbitration', in particular because people tend to be overwhelmed by such letters and maybe never fully consciously arrive at point five where the right to go to Court is formulated. This could thus be improved, but as it is, it is at least not clearly wrong or misleading.

The letter also includes a reference to e-Court's website and regulation, explains e-Court's standardized procedure, mentions that the Court fee can be prevented if the money is transferred within two weeks and that the costs of state litigation are higher than e-Court's procedure. In addition, the letter contains a roadmap that illustrates the choice graphically. Legally, e-Court is under a mere obligation to give a one-month 'opt-out' period in which a defendant can exercise his right to Court, and it follows logically that such an opportunity must be a real one.[44] The letter informs the defendant clearly of this opportunity to choose a state Court and is not in any way misleading: the defendant has been sufficiently enabled to exercise his right. It should be noted, however, that for many consumers e-Court is a more attractive option than litigation. To conclude, it follows from our legal analysis that e-Court's arbitration agreement is valid under Article 6 of the Convention.

42 R.C. Hartendorp, 'e-Court een goed initiatief dat zich op de verkeerde punten onderscheidt', *Rechtsgeleerd Magazijn Themis*, Vol. 2014, No. 3, 2014, pp. 117-122, at 117.

43 GGN specializes (see ggn.nl) in: a. the collection of claims; b. invoicing and accounts receivable management; c. credit management; d. execution of offcial acts; e. legal proceedings; all this in the broadest sense of the word.

44 *Golder v. the United Kingdom*, No. 4451/70, ECHR 1975

4 Independence and Impartiality

An arbitral tribunal must, similarly to a Court, be independent and impartial. The Chairman for the Council of the Judiciary, Frits Bakker, has criticized e-Court for its lack of transparency and called it an 'intransparent black box'.[45] In addition, some argue that e-Court is financially dependent on the companies, because they have included e-Court's arbitral clause in their standard terms. We examine these two allegations in order to determine whether the defendant's right to an independent and impartial tribunal is sufficiently guaranteed.

4.1 Transparency

e-Court has been criticized because it does not publish its verdicts or a list of its arbitrators. However, when e-Court awards a claim, its judgment is sent to both parties. This is common practice in the case of arbitration, where confidentiality is one of the core principles.[46] Regarding the arbitrators, e-Court indicates on its website that its arbiters were legal professionals with more than fifteen years of experience. In addition, the parties to the arbitration proceedings knew the identity of their arbitrator and had the opportunity to challenge the arbitrator and have him replaced. e-Court as an arbitral institute is not required to publish verdicts or a list of its arbitrators. Nonetheless, to meet criticism and increase transparency, some decisions as well as a list of e-Court's arbitrators have been published since early 2018.

Although the European Directive on Consumer ADR[47] is not applicable to e-Court, it is relevant as it sets out requirements for ODR platforms. When we look at the information that ADR platforms are required to publish online according to the Directive, it appears that e-Court publishes all required information, excluding annual activity reports.[48] They intended, however, to start publishing annual accounts as of 2018, since in previous years e-Court was still in the start-up phase.[49]

4.2 Independence

There are numerous criteria for assessing independence, including the manner of appointment of a body's members, the duration of appointment and guarantees against outside pressure.[50] First, the parties do not appoint the arbitrators, nor exert any influence over the duration of the arbitrators' term. Fellow arbitrators or e-Court's president do not influence an arbitrator when he makes a decision, as

45 F. Bakker, 'voorzitter van de Raad voor de Rechtspraak', as quoted *in* Kuijpers *et al*., 2018, p. 3.

46 A. Redfern, *Redfern and Hunter: Law and Practice of International Commercial Arbitration*. Oxford, Oxford University Press, 2015.

47 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes and amending Reg. (EC) No. 2006/2004 And Directive 2009/22/EC (Directive on Consumer ADR).

48 *Ibid*., Art. 7.

49 Interview e-Court, May 29 2018, Amsterdam.

50 Council of Europe/European Court of Human Rights, *Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (civil limb)*, 17 December 2017, p. 38

the arbitrators work independently from their own office and the president executes a managerial and organizational function, which is strictly separated from the judicial functions. Similarly, e-Court does not employ arbitrators who are in a subordinate position vis-à-vis a company, as that too would be considered seriously to affect its independence.[51] By incorporating these procedural safeguards, e-Court complies with the impartiality requirements as set forth in the new ADR Directive.[52] However, a tribunal should not only factually be independent, but also demonstrate an *appearance* of independence.

Critics argue that the mere inclusion of e-Court's arbitral clause by companies in their standard terms implies a relationship of dependency. However, this would imply that companies would never be allowed to have an arbitral clause in their standard terms that refers to an arbitral institution and would effectively mean only ad hoc arbitration would be allowed. Merely because a company has chosen the forum, it does not mean that that forum is not independent. Besides, the Court has held in *Oleksandr Volkov v Ukraine* that any defects regarding independence might be remedied in the subsequent stages of the proceedings.[53] The one-month 'opt-out' period is a good example of a subsequent procedural guarantee: if e-Court had not instilled an appearance of independence in the defendant, the defendant could opt for Court litigation. If the defendant makes no use of this opportunity, the principle of *collateral estoppel*[54] prevents the defendant from complaining about a lack of independence later on.

Yet, whereas the opinion of the defendant is important,[55] decisive is whether an 'objective observer' sees any cause for concern regarding independence in the specific circumstances.[56] The American Bar Association (ABA) has recommended best practices for ODR service providers,[57] which are based mainly on the use of disclosures. The ABA, similarly to the European Union, thus also sees a link between increased transparency and (appearance of) independence. They suggest that ODR providers should disclose *inter alia* organizational information, the terms and conditions, an explanation of the service that is provided and a confirmation that the proceeding will meet basic standards of due process. e-Court's website includes all disclosures mentioned in the ABA Guidelines. More specifically, with regard to independence, the guidelines recommend ODR platforms to disclose whether ODR services are provided under a contractual relationship with other organizations, such as merchants or trade associations, and whether the ODR provider provides any referral compensation (referral fees, rebates, commissions, etc.).[58] e-Court explains that none of the preceding examples are applicable

51 *Sramek v. Austria*, No. 8790/79, ECHR 1984, §42.
52 Directive 2013/11/EU, Art. 6.
53 *Oleksandr Volkov v. Ukraine*, No. 21722/11, ECHR 2013, §§103, 118, 123, 131.
54 R. Gordon, 'Only One Kick at the Cat: A Contextual Rubric for Evaluating Res Judicata and Collateral Estoppel in International Commercial Arbitration', *Fla. J. Int'l. L.*, Vol. 18, 2006, p. 549.
55 *Sacilor Lormines v. France*, No. 65411/01, ECHR 2006, §63.
56 *Clarke v. the United Kingdom* (dec. 2017; unpublished).
57 American Bar Association Task Force on E-Commerce and ADR – Recommended Best Practices for Online Dispute Resolution Service Providers.
58 *Ibid*., p. 6, under V1. Impartiality.

since they do not have any contractual relations with the companies, nor receive any referral compensation.[59] It does not follow from the ABA's guidelines or from the ADR Directive that there is an obligation to disclose relationships and arrangements that do *not* exist.

What follows from the ABA Guidelines as well as from the ADR Directive is that disclosures, and hence transparency, are also important for the sake of appearing independent and installing trust in users. However, this does not mean that every detail requires disclosure. As already mentioned, an arbitral award requires an exequatur before it can be executed, and for every exequatur a Court fee of €124 must be paid.[60] e-Court has repeatedly tried to combine all cases of the same applicant into one debt proceeding case, to avoid paying individual Court fees for every exequatur.[61] However, in 2013, the District Court confirmed that even though the creditor was the same in all cases, these were still considered separate judgments and therefore required separate exequaturs.[62] There has been controversy in the media because it is unclear how e-Court can cover these costs of €124 if their Court fee is only €85. e-Court explains that this aspect of the procedure is classified information. This is a bit odd, also because there is no other explanation than that the contactors they offer their services to (like insurance companies) will cover the differences, and probably even more than that. That being said, the ABA Guidelines mention that disclosures should be made regarding costs and funding, but an ODR platform is not required to publicize its business model. Mentioning all costs of the process, what portion of the cost each party will bear and the terms of payment is sufficient.[63] Similarly, the ADR Directive does not require a platform to disclose such information, only "the costs, if any, to be borne by the parties, including any rules on awarding costs at the end of the procedure."[64] As e-Court meets all these criteria, we can conclude that e-Court has appropriate institutional safeguards in place and discloses sufficient information. In the eye of an objective observer, e-Court thus also appears sufficiently independent.

4.3 Impartiality

Regarding impartiality, the ECtHR has adopted a double impartiality test: arbitrators should be both personally, or *subjectively,* and *objectively* impartial. As we have seen, default verdicts are the sole result of an automated procedure. In such cases, the computer is the arbitrator, and because of the simplicity of the ruling (awarding or not awarding the claim) partiality is not very likely. Moreover, e-Court's algorithm detects disproportionately high claims and other deviations, and thereby aims to ensure absence of bias. When a defendant does respond to a claim, an arbitrator looks at a case and shall "execute the assignment independ-

59 Interview e-Court, 29 May 2018, Amsterdam.
60 Art. 1072a Rv jo. Art. 261 Rv jo. Art 3(2) and (4) Wgbz jo. Art. 22 (1) Wgbz.
61 ECLI:NL:RBALM:2011:BT7623.
62 r.o. 2.10, ECLI:NL:RBOVE:2013:2138.
63 American Bar Association Task Force on E-Commerce and ADR – Recommended Best Practices for Online Dispute Resolution Service Providers, p. 5, under V. Costs and Funding.
64 Directive 2013/11/EU, Art. 7 (1) l.

ently, impartially and to his best abilities. In doing so, he is bound by the (i) Code of behavior, (ii) e-Court's regulation, and (iii) the law."[65] Subjectively, an arbitrator should not have any conflict of interest regarding a certain case. There has not been any evidence pointing in that direction, and, moreover, the cases are relatively straightforward: debt collection proceedings do not require extensive interpretation and do not lend themselves well for biased arbitrators. The ECtHR consistently holds that "the personal impartiality of a judge must be presumed until there is proof to the contrary".[66]

The objective impartiality test concerns whether the tribunal offers sufficient guarantees to exclude any legitimate doubt in respect of its impartiality. Firstly, e-Court only employs legal professionals with a university degree in law, 15 years of relevant, preferably litigation, experience and sufficient knowledge of Dutch civil procedural law. Second, if doubts remain as to the impartiality of e-Court, there is a one-month 'opt-out' period during which a defendant can choose another forum. Lastly, if any doubts regarding the arbitrator's independence or impartiality arise during the procedure, there is an opportunity to challenge and replace the arbitrator.[67] By implementing all of these safeguards, e-Court fulfils all the recommended best practices by ABA.[68] e-Court meets both the objective and the subjective impartiality criteria.

5 Fair Hearing

The right to a fair hearing is arguably the most important right under Article 6 and hence deserves protection. We will examine whether e-Court sufficiently guarantees the right to a fair hearing, by looking at all aspects of the procedure. First, does the 'robot' procedure undermine in any way the right to a fair hearing? And, second, is e-Court's online procedure sufficiently accessible, adversarial and providing a fair balance between the parties?

5.1 Robot Judge

As e-Court's default verdicts are entirely rendered by a computer, it is criticized for being a 'robot judge'. It is important to note that only e-Court's *default* verdicts are rendered automatically; when a defendant responds to the claim, a human arbitrator looks at the case. E-Court's procedure is thus fully automated only when a defendant does not respond, and this process consists of seven steps:

1 Identification of parties;
2 Establishing competence of e-Court;
3 Establishing the correct application of the e-Court's procedural laws;
4 Selection of the correct template;

65 Art. 6 (4) e-Court's procedural rules.

66 *Le Compte, Van Leuven and De Meyere v. Belgium*, No. 6878/75, Court Judgment, §58; *Micallef v. Malta,* No. 17056/06, [GC], ECHR 2009, §94.

67 Art. 7 (1) e-Court's procedural rules.

68 American Bar Association Task Force on E-Commerce and ADR - Recommended Best Practices for Online Dispute Resolution Service Providers, p.6 under V1. Impartiality

5 Deciding on the correct verdict;
6 Producing the original verdict (with the correct digital signature) and
7 Determining that the claim is not unjust or unlawful.[69]

These are all relatively straightforward tasks, and indeed e-Court makes very limited use of the available artificial intelligence (AI) techniques in legal decision-making, as, for example, stages one to three are performed by simple administrative software. When a defendant does not respond to a claim and all requirements have been positively fulfilled, the award is rendered through this seven-step procedure, or, in other words, by an algorithm. With understandable scepsis, it is argued that without an actual human judge looking at the claim, the quality of justice cannot be guaranteed and, moreover, that there is no legal basis for such 'robot judgment'.[70]

Does this automated procedure undermine the defendant's right to a fair hearing? First, e-Court assesses its competence like any other arbitral tribunal and *ex officio* checks whether the consumer contract complies with European consumer law, just like Dutch Courts are required to do.[71] This review of the standard terms and the arbitral clause is done by a human arbitrator "to establish a level of trust and (…) be convinced of the integrity and the good faith of the Plaintiff".[72] So once a human arbitrator has checked whether there is indeed a valid arbitral clause that refers to e-Court in the standard terms and whether the claim is formulated clearly enough, the computer can analyse the ensuing claims. Assessing its competence and compliance with European consumer law is thus not decided automatically, but by human arbitrators.

Second, it is important to distinguish default cases from cases in which the defendant responds to the claim. Currently, AI is not advanced enough to decide on complicated cases and really balance and weigh arguments.[73] Therefore, when a defendant contests the claim, a human arbitrator looks at the case, decides whether new evidence is allowed and decides.[74] Thus, where there is a matter of legal or factual complexity and actual adjudicating is required, a human arbitrator decides.

In addition, the risk that a company files an unjust claim is smaller in e-Court's procedure than in traditional litigation. The bailiff has the legal task[75] to summon a defendant and check whether the claim is real and correct. Similar to how a District Court works, a claim is held to be correct until proven otherwise. However, while a District Court does this by randomly checking claims, in which there is an element of chance and arbitrariness, the computer algorithm used by

69 Nakad-Weststrate *et al.*, 2015, p. 1107.
70 One could argue that Art. 22(1) GDPR prevents e-Court from ruling automatically. The exceptions of Art. 22(2) of explicit consent and performance of contract may apply, but also may not. This is an interesting issue that deserves further attention.
71 ECLI:NL:HR:2013:691. Supreme Court, 13 September 2013.
72 Nakad-Weststrate *et al.*, 2015, p. 1107.
73 *Ibid*.
74 Art. 9 (3) e-Court's procedural rules.
75 Art. 2 Gerechtsdeurwaarderswet.

e-Court detects any abnormal deviation. For example, old claims, very high claims as well as many very low claims that suggest improper filing costs, etc. are discovered. Bart Houkes, social councillor and co-author of the critical report 'Rechtspraak op Bestelling?!',[76] argues that there should be a more thorough review of the default verdicts: "now it is only done by a computer, this does not guarantee sufficient quality of justice."[77] However, up to now there has not been a single case in which e-Court's calculations were proven wrong, while there have been examples of human error as a result of the manual process of copying all data.[78] e-Court's digital procedure is not only faster than traditional litigation, but it is also objective and works without miscalculations.[79] It then does not undermine but rather *improves* the defendant's right to a fair hearing.

However, an arbitral procedure cannot guarantee the right to a fair hearing if it does not have any legal basis. The Minister of Justice has stated with regard to e-Court's automated judgment that "digitization is an increasingly important tool in modern dispute resolution. However, fully automated decision-making without any intervention from a judge are a concern."[80] e-Court's founder Nakad addresses this complication: "Dutch legislation does not provide for the possibility of a digital judge (…) and its incorporation in the laws and regulations is not to be expected soon."[81] Indeed, Dutch law states that an arbitrator is any natural person with legal capacity.[82]

To solve this requirement of having a human arbitrator, e-Court therefore renders the automated verdict in the name of the arbitrator, who does nothing more than random checks. This seems an appropriate solution, as a similar practice takes place at District Courts. A judge does not calculate any claims; all that is done by the registry's computer; the judge merely signs the claim. Similarly, orders from the Central Judicial Collection Agency (CJIB) are created by a fully digitalized process, without any human intervention.[83] While the use of AI in judicial proceedings is a very interesting topic that undoubtedly requires further investigation, it seems strange to contest e-Court's legal basis when there is no fundamental difference when compared with Court proceedings and its procedure is even more accurate.

5.2 Accessibility

The large majority of debt collection procedures at a District Court are judged by default, and defendants consequently do not participate in that litigation process at all. Similarly, in e-Court's procedure only 12% of all defendants respond to the

76 Moerman & Houkes, 2018.
77 Interview Bart Houkes, Wednesday 25 April 2018.
78 Nakad-Weststrate *et al.*, 2015, p. 1108.
79 *Ibid*.
80 Parliamentary Papers ah-tk-20172018-1802.
81 Nakad-Weststrate *et al.*, 2015, p. 1108.
82 Art. 1023 Rv.
83 M. Hildebrandt, 'Data-gestuurde intelligentie in het strafrecht', *Preadvies NJV*, 2016.

claim.[84] However, while only a few defendants want to respond to a claim, responding should not be difficult to do. In other words, the procedure should be accessible. Since e-Court's procedure takes place in an entirely online environment, access to the Internet and some digital skills are required.

André Moerman, social councillor and author of the critical report 'Rechtspraak op Bestelling?!',[85] stated in an interview that "especially the clients who look for help from social councilors, are not capable of proceeding digitally".[86] Does e-Court's procedure require an advanced set of digital skills? Its website uses easy language and pictures to guide a defendant through the process, e-Court sends emails to remind the defendant when terms for response are almost over,[87] and defendants can respond to a claim in Dutch or English. For an average Internet user, this process should not cause any difficulties. This then leads us to an important question: when is a law or procedure considered to be sufficiently accessible? When *everyone* understands it? There will always be illiterate or otherwise helpless people for whom any form of proceeding is incomprehensible. These are the people that Moerman is talking about, and they obviously deserve protection, but it is very doubtful that these same people understand court proceedings. Very likely, more people will encounter difficulties understanding court proceedings than the e-Court procedure.

For the majority of people, e-Court's procedure is easily accessible. First, most people have signed their health insurance contract online, and it makes sense to resolve any dispute arising from that contract online as well. Second, out of the 33,000 procedures, only five people have complained that they did not understand the process.[88] Third, GGN has shown that defendants communicate sooner with them in e-Court procedures than in traditional litigation procedures and that three times more payment arrangements have been made. Moreover, under the new ADR Directive, e-Court's responsibility regarding accessibility of the procedure means that e-Court should

> maintain an up-to-date website which provides the parties with easy access to information concerning the ADR procedure, and which enables consumers to submit a complaint and the requisite supporting documents online.[89]

e-Court easily complies with these requirements; hence e-Court's procedure is sufficiently accessible and even seems to foster communication. Besides, in case a defendant has in no way access to the Internet, it is possible to proceed offline. In such a case, requests, responses and other statements can be sent by ordinary

84 R. van Etten, 'Droom of werkelijkheid: digitale rechtspraak leidt tot meer betalingen en minder zaken voor rechter', 27 March 2018, www.ggn.nl/actueel/2018/~/link.aspx?_id=248979438BAD43049933CEFD06195281&_z=z.

85 Moerman & Houkes, 2018.

86 André Moerman as quoted in an episode of *Nieuwsuur*: 'Robotrechter e-Court is een groot en niet transparant zwart gat', 17 January 2018.

87 Art. 3 (4) e-Court's procedural rules.

88 Van Etten, 2018.

89 Directive 2013/11/EU, Art. 5(2) a

mail.[90] To conclude, going to Court is, also for the digital non-literates, likely more cumbersome than, maybe with some help, going through the process online via e-Court.

5.3 Adversariality

Once the procedure has started, defendants have five days to respond to a claim. Is this period sufficient to give effect to such a fundamental principle as the right to adversarial proceedings? The Court held in *Nideröst-Huber v. Switzerland* that the desire to save time and expedite the proceedings never justifies disregard of the adversarial principle.[91] We must keep in mind that the cases concern money claims and hence does not require extensive fact-finding or legal debate. However, even in such simple cases it is important to give the parties the right to put statements forward as well as to be heard. This also implies that the tribunal should 'duly consider' the defendant's arguments.[92] While the defendant indeed has five days to respond, starting from Monday 09:00 until Friday 17:00, the defendant is informed by letter about the procedure one month before it starts. This is crucial, because during this period the defendant can already contact GGN and, if a payment arrangement is made, even *prevent* the e-Court fee. So in effect the defendant has a month and five days to respond to a claim.

Compare this with a District Court's letter in which a defendant is informed one week before the hearing takes place and in which a claim is usually awarded by default. Health insurance company CZ states that compared with traditional litigation, e-Court's method was very customer-friendly.[93] Practice thus reveals that the defendants readily find their way to communicate and that the principle of adversariality is sufficiently present in e-Court's procedure.

5.4 Equality of Arms

e-Court must also ensure 'equality of arms' in order to safeguard the right to a fair hearing. This principle is closely interlinked to the principle of adversariality and serves to maintain a 'fair balance' between the parties. This is important, because the applicant will have more experience with the online system since it resolves all its debt collection disputes through e-Court. At the outset, the parties to the proceeding are thus unequal. However, this does not necessarily mean that there is no longer a fair balance between the parties. An assessment of the proceedings is determined by examining them in their entirety,[94] and shortcomings in the fairness of the proceeding may be remedied at a later stage.[95] According to e-Court's regulation, an arbitrator must treat the parties on an equal footing.[96] In

90 Art. 3(7) e-Court's procedural rules.
91 *Nideröst-Huber v. Switzerland*, No. 18990/91, Court Judgment 1997, §30.
92 *Donadze v. Georgia*, No. 74644/01, ECHR 2006, §35.
93 Press release CZ February 16, 2018: "CZ zoekt voor verzekerden naar alternatief voor laagdrempelige en betaalbare arbitrage na wegvallen e-Court."
94 *Ankerl v. Switzerland*, No. 17748/91, Court Judgment 1996, §38; *Centro Europa 7 S.r.l. and Di Stefano v. Italy,* No. 38433/09, [GC], ECHR 2012, §197.
95 *See, e.g. Helle v. Finland*, No. 20772/92, Court Judgment 1997, §54.
96 Art. 6 (5) e-Court's procedural rules.

more concrete terms, this means that a defendant should have the possibility to put statements forward and get a real chance to comment on replies, under conditions that do not place the defendant at a substantial disadvantage vis-à-vis the plaintiff.[97]

Moreover, in e-Court's procedure, the plaintiff must ensure that the defendant has sufficient opportunity to respond to any new statements. To that end, the arbitrator may issue further instructions with regard to the period of delivery of the reply or dismiss statements for being too late. In practice, an arbitrator considers a plaintiff's statement too late when it is written on Thursday or Friday.[98] Thus, the plaintiff, and otherwise the arbitrator, aims to realize that the defendant has sufficient time to comment on a statement. While the parties are at the outset not 'equal', e-Court offers extra protection to the defendant so as to compensate and thereby effectively treats the parties as equal.

6 Is e-Court's Process Fair?

Allegations regarding lack of transparency, lack of independence, unlawfully denying access to a state Court and e-Court being a 'robot judge' were widespread in the media. Ultimately, criticism boiled down to the fact that the defendant's right to a fair trial was not guaranteed in e-Court's procedure.

On the basis of our foregoing analysis, we argue that e-Court's procedure sufficiently guarantees the right to a fair trial under Article 6 of the Convention. e-Court's arbitral agreement is concluded in the manner required by the Convention and is therefore a valid 'waiver'. Moreover, e-Court offers sufficient safeguards and has published necessary information on its website. Through these disclosures, it thereby meets the best practices for ODR platforms as outlined by the ABA as well as the requirements for ODR platforms as enshrined in the ADR Directive. Sufficient transparency also aids e-Court in guaranteeing the right to an independent and impartial tribunal.

e-Court's procedure offers the opportunity for the defendant to comment and be heard and offers additional protection in order to treat the inherently unequal parties equally. Its online process is straightforward, clear and sufficiently accessible for an average digital user. By ensuring an adversarial process, equality of arms and an accessible process, e-Court thus also guarantees the right to a fair hearing. The improved communication and increased number of payment arrangements reveal that these principles do not exist only on paper: defendants respond well to e-Court claims and are thereby often able to avoid the *Court fee*. Insofar as the Convention is applicable to an arbitral tribunal, e-Court thus guarantees the defendant the right to a fair trial.

One point where e-Court needs to change its policy is that the defendant is informed by writ and subsequently charged for it. While the first is allowed, there

97 *Regner v. the Czech Republic* [GC], § 146; *Dombo Beheer B.V. v. the Netherlands*, § 33.
98 Interview e-Court, 29 May 2018, Amsterdam.

is no legal basis for ascribing these costs to the defendant.[99] The Minister of Justice, Sander Dekker, has informed the Royal Professional Organization of Judicial Officers in The Netherlands (KBvG)[100] that there is no legal basis for such conduct.[101]

7 Conclusion

When we read the 2018 report on e-Court by Moerman & Houkes we largely agreed with their findings and considered e-Court an initiative with serious shortcomings. After the legal analysis reported on in this article, however, we conclude that most criticism is not legal but seems either to be political or to originate from a protectionist viewpoint. For example, an arbitral clause included in the standard terms is simply something people do not *like;* a letter that is sufficiently informative but does not include positive news is bound to receive criticism; and arbitration tribunals that do not publish a list of their arbitrators and their verdicts are considered untrustworthy. Yet these critiques are all *political*: legally, there is no convincing ground for any of these arguments. Similarly, the fundamental belief that dispute resolution is inherently a state responsibility is political. Stating that "arbitration is an undesirable solution to bulk debt collection proceedings"[102] is potentially an interesting claim but is not linked to a legal discussion. Arbitration is explicitly allowed for under the Convention, and e-Court complies with all requirements.

Other criticisms, such as that the defendant's rights are not protected, that an automated judgment is not valid and doubts concerning the depth of review of arbitral award, originated from the Council of the Judiciary. These arguments are similarly legally unfounded and seem to have their origin in protectionism.

While e-Court was supposed to handle 40,000 cases in 2018, the media frenzy led the LOVCK[103] to refrain from granting exequaturs to e-Court's procedure until the Supreme Court had answered several prejudicial questions. These will most likely include the legality of an automated default process, the validity of an arbitral clause in the general terms of a consumer contract, the motivation of verdicts, and the manner of review of arbitral awards. Pending a decision, e-Court is not operational. However, as the judiciary in the Netherlands has voiced its concerns regarding the effects of competition, possible loss of employment and use of digitalization, e-Court correctly argues that a Dutch Court is not impartial and therefore not competent to rule on this matter. Preliminary judicial questions should therefore instead be referred to the Court of Justice of the Euro-

99 Response from the Minister of Legal Protection to Parliamentary Inquiries about e-Court (18 April 2018): ah-tk-20172018-1802.

100 Koninklijke Beroepsorganisatie van Gerechtsdeurwaarders.

101 Letter from the Minister of Legal Protection to the Chair of the Dutch Parliament (16 April 2018): kst-29279-423.

102 Moerman & Houkes, 2018.

103 In Dutch: Landelijk Overleg Vakinhoud Civiel en Kanton [National Coordination on legal issues lower Courts].

pean Union (CJEU), or the case could be taken to the Supreme Court and afterwards to the ECtHR.

When we look at the criticisms outed in the media frenzy, it seems that people are not used to an online platform deciding on 'judicial' disputes and believe dispute resolution inherently is a state task. While bulk debt collection cases lend themselves perfectly for online arbitration and automated judgments because of its high volume and simplicity, perhaps some more time is needed before people trust the dispute resolution ability of 'a robot'. However, e-Court was actually quite successful and decided on thousands of cases in 2017. To be more accurate, then, it seems that the real issue is that some more time is needed before it is accepted that the Dutch *judiciary* shares its dispute resolution task.